

**Request for Proposal
To Provide A
Professional Consultant**

**Mississippi State Personnel Board
301 North Lamar Street
Jackson, MS 39201**

RFP NO. 98-02-SPB

**Contact Person: John Smith
601-999-9999
Fax Number: 601-999-9999**

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**MISSISSIPPI STATE PERSONNEL BOARD
301 North Lamar Street, Suite 100, Jackson, MS 39201
(601)999-9999**

INVITATION: Written proposals subject to the conditions herein stated and attached hereto, will be received at this office until Wednesday, May 6, 1998, at 2:00 p.m. local time for furnishing the services as described below for the Mississippi State Personnel Board.

DESCRIPTION: The Mississippi State Personnel Board (SPB) is hereby requesting written proposals to provide a professional consultant.

The Mississippi State Personnel Board will receive proposals from firms having specific experience and qualifications in the area identified in the solicitation. For consideration, proposals for the project must contain evidence of the firm's experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by the Mississippi State Personnel Board may be included elsewhere in the solicitation. Unless otherwise stated, all offerors shall provide profiles and resumes' of the staff to be assigned to the project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the offerors' expertise in the area of the solicitation.

A selection committee shall review and evaluate all replies. The selection committee will have only the response to the solicitation to review for selection of finalists. It is therefore important that respondents emphasize specific information pertinent to the work. Evaluation of the responses will be based on the following criteria:

- A. The overall quality of the proposed plan for performing the required services **(Critical)**
- B. Understanding of the project and its objectives **(Very Important)**
- C. The degree of completeness of response to the specific requirements of the solicitation **(Very Important)**
- D. Proposer's ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.). This includes the ability of the proposer to provide a work product that is legally defensible **(Very Important)**
- E. The personnel, equipment, facilities, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting **(Important)**
- F. A record of past performance of similar work **(Critical)**
- G. Price. **(Important)**

Inquires regarding this Request for Proposal must be directed to:

John Smith, (TITLE)
MS State Personnel Board
301 N. Lamar Street
301 Building, Suite 100
Jackson, MS 39201
(601) 999-9999

Proposals and attachments must be submitted to:

Jim Smith, (TITLE)
MS State Personnel Board
301 N. Lamar Street
301 Building, Suite 100
Jackson, MS 39201
(601) 999-9999

MISSISSIPPI STATE PERSONNEL BOARD

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**301 NORTH LAMAR STREET, 301 BUILDING, SUITE 100
JACKSON, MISSISSIPPI 39201**

1.0 SPECIFICATIONS, TERMS AND CONDITIONS FOR PROFESSIONAL CONSULTING SERVICES

1.1 General Statement:

The Mississippi State Personnel Board (SPB), in order to ensure that selection procedures for screening applicants for jobs with the state service in Mississippi are job related and legally defensible, is desirous of securing the services of a professional consultant. Additional information may be obtained by written request from, {name, title, agency, address}.

1.2 Detailed Minimum Specifications:

Devise a written proposal that will ensure that selection procedures for screening applicants for jobs with the state service of Mississippi are job related and legally defensible. All information, results, conclusions, studies and other data arising out of the consultant's performance may be utilized by the state in litigation. The written proposal should be such that it clearly and fully explains how the consultant will:

- (1) provide expertise in conjunction with the development of valid job descriptions with essential functions in compliance with federal law, specifically, The Americans with Disabilities Act (ADA).
- (2) provide job related minimum qualifications for job classes selected or identified by the Mississippi State Personnel Board. Provide a recommendation on the continued utilization of tests, where applicable, in association with these job related minimum qualifications.
- (3) provide professionally developed job descriptions with job related minimum qualifications and essential functions in compliance with federal law, with necessary documentation as professionally appropriate for establishing job relatedness.
- (4) provide Job Class Specifications in both hard copy (paper) and electronic formats. The State Personnel Board uses WordPerfect DOS Version 5.1 to maintain its current Job Class Specifications documents. Special features of WordPerfect 5.1 are used to format the documents. The consultant submitting the proposal will be required to provide electronic files in the format specified by the Mississippi State Personnel Board on either 3.5" or 5.25" diskette media. Special formatting codes, file naming conventions, and other instructions will be provided to the consultant at the time of the award. As an option, the consultant's proposal should provide provision of all documentation in both hard copy and electronic format. Electronic files are to be provided in WordPerfect 5.1 and on media as specified above.

The price submitted shall reflect a total cost for each successfully completed job description provided for each job class, specifying the total number of job descriptions that the consultant can successfully complete no later than May 31 of each fiscal year. The Mississippi State Personnel Board staff will provide the consultant with lists identifying the specific job classes for which these services are to be performed. Completed job

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descriptions must be delivered to the Mississippi State Personnel Board for review as follows:

- (1) The first batch must be delivered no later than three months after the commencement of the contract with a minimum of 15 job descriptions being submitted for review.
- (2) All other batches must be delivered each month thereafter with a minimum of 17 job descriptions being submitted for review each month.

The total price to be paid for performance of the above consulting services shall not exceed \$330,000 per fiscal year.

The period of performance of this service is for fiscal years 1999 through 2002 (July 1, 1999 - June 30, 2002). The contract is renewable for a period of one year for fiscal year 2003 (July 1, 2002 - June 30, 2003) conditioned upon the receipt of state funds and satisfactory performance during prior fiscal years as determined by the State Personnel Director.

2.0 CONSULTANT'S WRITTEN PROPOSAL SHALL CONTAIN THE FOLLOWING MINIMUM INFORMATION:

- (1) Name of consultant; location of consultant's principal place of business; the place of performance of the proposed contract;
- (2) Age and size of consultant's business;
- (3) Resume' listing abilities, qualifications and experience of all individuals who will be assigned to provide the required services;
- (4) A listing of three contracts under which services similar in scope, size, or discipline were performed or undertaken. On a proposal form, list three (3) projects to include the names and addresses of the projects, the scope of the project, and the names and telephone number of the clients for reference purposes. All information on the proposal form must be completed. Incomplete or unsigned proposal forms will be rejected;
- (5) A plan giving as much detail as is practical explaining how the services will be performed.
- (6) An estimate of price.

3.0 INSURANCE REQUIREMENTS

The successful offeror/proposer will be required to procure and maintain errors and omissions/professional liability coverage in the amount of:

\$250,000 per occurrence for Fiscal Year 1999

\$250,000 per occurrence for Fiscal Year 2000

\$250,000 per occurrence for Fiscal Year 2001

\$500,000 per occurrence for Fiscal Year 2002

\$500,000 per occurrence for Fiscal Year 2003 (provided renewal option is exercised); and offer proof of such coverage. The Mississippi State Personnel Board reserves the right to request from carriers certificates of insurance regarding the required coverage.

4.0 RENEWAL OF CONTRACTS

The contract may be renewed at the discretion of the agency upon written notice to the contractor at least 60 days prior to the contract anniversary date for a period of one year under the same

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prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed one.

5.0 COMPENSATION FOR SERVICES WILL BE IN THE FORM OF A FIRM FIXED PRICE AGREEMENT**6.0 REJECTION OF PROPOSALS**

Proposals which do not conform to the requirements set forth in this RFP may be rejected by the Mississippi State Personnel Board. Proposals may be rejected for reasons which include, but are not limited to, the following:

- (1) The proposal contains unauthorized amendments to the requirements of the RFP.
- (2) The proposal is conditional.
- (3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
- (4) The proposal is received late.
- (5) The proposal is not signed by an authorized representative of the party.
- (6) The proposal contains false or misleading statements or references.
- (7) The proposal does not offer to provide all services required by the RFP.

7.0 ACCEPTANCE OF PROPOSALS

The Mississippi State Personnel Board reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP which does not affect the price of the proposal, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of the Mississippi State Personnel Board. Waivers, when granted, shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements, if the party is awarded the contract.

8.0 DISPOSITION OF PROPOSALS

All submitted proposals become the property of the State of Mississippi.

9.0 COMPETITIVE NEGOTIATION

The bidding method to be used is that of competitive negotiation from which the Mississippi State Personnel Board is seeking the best combination of price, experience and quality of service. Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, the Mississippi State Personnel Board also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of offered terms, services or prices. Therefore, all parties are advised to propose their most favorable terms initially.

10.0 RFP DOES NOT CONSTITUTE ACCEPTANCE OF OFFER

The release of the Request for Proposal does not constitute an acceptance of any offer, nor does such release in any way obligate the Mississippi State Personnel Board to execute a contract with any other party. The Mississippi State Personnel Board reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with the Mississippi State Personnel Board.

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11.0 EXCEPTIONS AND DEVIATIONS

Offerors taking exception to any part or section of the solicitation shall indicate such exceptions on the proposal and shall be fully described. Failure to indicate any exception will be interpreted as the offeror's intent to comply fully with the requirements as written. Conditional or qualified offerors, unless specifically allowed, shall be subject to rejection in whole or in part.

12.0 NONCONFORMING TERMS AND CONDITIONS

A proposal that includes terms and conditions that do not conform to the terms and conditions in the Request for Proposal is subject to rejection as non-responsive. The Mississippi State Personnel Board reserves the right to permit the offeror to withdraw nonconforming terms and conditions from its proposal prior to a determination by the Mississippi State Personnel Board of non-responsiveness based on the submission of nonconforming terms and conditions.

13.0 PROPOSAL ACCEPTANCE PERIOD

The original and five (5) copies of the proposal and all attachments (six (6) copies total) shall be signed and submitted in a sealed envelope or package to {name, address} no later than two o'clock p.m. on Wednesday, May 6, 1998. Timely submission of the proposal is the responsibility of the offeror. Offers received after the specified time shall be rejected and returned to the offeror unopened. The envelope or package shall be marked with the proposal opening date and time and the number of the request for proposal. The time and date of receipt shall be indicated on the envelope or package by the SPB Business Office. Each page of the proposal and all attachments shall be identified with the name of the offeror.

14.0 EXPENSES INCURRED IN PREPARING OFFERS

The Mississippi State Personnel Board accepts no responsibility for any expense incurred by the offeror in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the offeror.

15.0 PROPRIETARY INFORMATION

The offeror/proposer should mark any and all pages of the proposal considered to be proprietary information. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

16.0 ADDITIONAL INFORMATION

Questions about the request for proposals document must be submitted in writing to {name} at {address}; fax number 601-999-9999. Offerors are cautioned that any statements made by the contact person that materially change any portion of the Request for Proposal shall not be relied upon unless subsequently ratified by a formal written amendment to the Request for Proposal.

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17.0 ACKNOWLEDGMENT OF AMENDMENTS

Offerors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal, by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgment must be received by the Mississippi State Personnel Board by the time and at the place specified for receipt of proposals.

18.0 DEBARMENT

By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the state of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the state of Mississippi.

19.0 STANDARD TERMS AND CONDITIONS**Certification of Independent Price Determination**

The bidder certifies that the prices submitted in response to the solicitation have been arrived at independently and without - for the purpose of restricting competition - any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

Prospective Contractor's Representation Regarding Contingent Fees *(To be placed in prospective contractor's response bid or proposal.)*

The prospective contractor represents as a part of such contractor's bid or proposal that such contractor has/has not (*use applicable word or words*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The contractor shall comply with applicable federal and state local laws and regulations.

Availability of Funds

It is expressly understood and agreed that the obligation of the State to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at anytime, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the state, the state shall have the right upon ten (10) working days written notice to the contractor, to terminate this agreement without damage, penalty, cost or expenses to the state of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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Procurement Regulations

The contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 301 North Lamar Street, Jackson, MS, for inspection.

Confidentiality

The contractor shall agree to assure the confidentiality of any records obtained from the State Personnel Board as required by state and federal privacy laws. No information, documents or other material provided to or prepared by the contractor deemed confidential by SPB pursuant to state and federal privacy laws, shall be made available to any person or organization without the prior approval of SPB. Any liability resulting from the wrongful disclosure of confidential information on the part of the contractor shall rest with the contractor.

Stop Work Order

- (1) *Order to Stop Work.* The Procurement Officer of SPB, may, by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
 - (a) cancel the stop work order; or
 - (b) terminate the work covered by such order as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.
- (2) *Cancellation or Expiration of the Order.* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (b) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work.* If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) *Adjustments of Price.* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Compliance with Laws

The Contractor understands that the SPB is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this

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agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Representation Regarding Contingent Fees

The contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the contractor's proposal.

Representation Regarding Gratuities

The offeror, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

Anti-Assignment/Subcontracting

The Contractor acknowledges that it was selected by the SPB to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this agreement in whole or in part without the prior written consent of the SPB, which the SPB may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the SPB of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the SPB may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Mississippi State Personnel Board all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the Mississippi State Personnel Board under said contract.

Approval

It is understood that the Contract is void and no payment shall be made in the event that the Personal Service Contract Review Board does not approve this contract.

Attorneys' Fees and Expenses

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorneys' fees or costs of legal action to the Contractor.

Authority to Contract

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or

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prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

Change in Scope of Work

The Mississippi State Personnel Board may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Mississippi State Personnel Board and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Mississippi State Personnel Board in writing of this belief. If the Mississippi State Personnel Board believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

Contractor Personnel

The Mississippi State Personnel Board shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Contractor. If the Mississippi State Personnel Board reasonably rejects staff or Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Mississippi State Personnel Board in a timely manner and at no additional cost to the Mississippi State Personnel Board. The day-to-day supervision and control of the Contractor's employees and Subcontractors is the sole responsibility of the Contractor.

Failure to Deliver

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the Mississippi State Personnel Board, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Mississippi State Personnel Board may have.

Failure to Enforce

Failure by the Mississippi State Personnel Board at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Mississippi State Personnel Board to enforce any provision at any time in accordance with its terms.

Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the SPB immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for

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a period equal to the duration of the delay caused by such events, unless the SPB determines it to be in its best interest to terminate the agreement.

Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the SPB, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

Independent Contractor Status

The Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as an agent for the SPB. Nothing contained herein shall be deemed or construed by the SPB the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint venturers, employer and employee, or any similar such relationship between the SPB and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the SPB or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the SPB and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the Mississippi State Personnel Board; and the Mississippi State Personnel Board shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Mississippi State Personnel Board shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Mississippi State Personnel Board shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

No Limitation of Liability

Nothing in this Agreement shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

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Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: *name, title, contractor, address*

For the Customer: *name, title, agency, address*

Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Mississippi State Personnel Board.

Ownership of Documents and Work Papers

The Mississippi State Personnel Board shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the contract services which are the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to Mississippi State Personnel Board upon termination or completion of the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Mississippi State Personnel Board and subject to any copyright protections.

Record Retention and Access to Records

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the SPB or any duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the Contractor for three (3) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

Recovery of Money

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the Mississippi State Personnel Board, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the Mississippi State Personnel Board. The rights of the Mississippi State Personnel Board are in addition and without prejudice to any other right the Mississippi State Personnel Board may have to claim the amount of any loss or damage suffered by the Mississippi State Personnel Board on account of the acts or omissions of the Contractor.

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Right to Inspect Facility

The State may at reasonable times inspect the place of business of a Contractor or any Subcontractor which is related to the performance of any Contract awarded by the State.

State Property

Contractor will be responsible for the proper custody and care of any State-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

Termination for Convenience Clause

- (1) *Termination.* The Procurement Officer of the SPB may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) *Contractor's Obligations.* The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the SPB. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default Clause

- (1) *Default.* If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer of the SPB may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the SPB shall be at the contract price. The SPB may withhold from amounts due the Contractor such sums as the Procurement Officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

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- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of Subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience,". (As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier).

- (5) *Erroneous Termination for Default.* If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Third Party Action Notification

Contractor shall give the Mississippi State Personnel Board prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

Unsatisfactory Work

If at any time during the contract term, the service performed or work done by the Contractor is considered by the Mississippi State Personnel Board to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Contractor shall, on being notified by the Mississippi State Personnel Board, immediately correct such deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Mississippi State Personnel Board shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

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Waiver

No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

22.0 EVALUATION PROCEDURE AND FACTORS TO BE CONSIDERED IN THE EVALUATION PROCESS:

22.1 Qualifications of Offerors

The offeror may be required before the award of any contract to show to the complete satisfaction of the Mississippi State Personnel Board that it has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The offeror may also be required to give a past history and references in order to satisfy the Mississippi State Personnel Board in regard to the offeror's qualifications. The Mississippi State Personnel Board may make reasonable investigations deemed necessary and proper to determine the ability of the offeror to perform the work, and the offeror shall furnish to the Mississippi State Personnel Board all information for this purpose that may be requested. The Mississippi State Personnel Board reserves the right to reject any offer if the evidence submitted by, or investigation of, the offeror fails to satisfy the Mississippi State Personnel Board that the offeror is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the offeror's qualifications shall include:

- (1) the ability, capacity, skill, financial, and other necessary resources to perform the work or provide the service required;
- (2) the ability of the offeror to perform the work or provide the service promptly or within the time specified, without delay or interference;
- (3) the character, integrity, reputation, judgment, experience, and efficiency of the offeror; and
- (4) the quality of performance of previous contracts or services.

22.2 Step I: Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

Step II: Proposals that satisfactorily complete Step 1 will be reviewed/analyzed to determine if the proposal adequately meets the needs of the Mississippi State Personnel Board. Factors to be considered are as follows:

- (1) The overall quality of the proposed plan for performing the required services (**Critical**)
- (2) Understanding of the project and its objectives (**Very Important**)
- (3) The degree of completeness of response to the specific requirements of the solicitation (**Very Important**)

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- (4) Proposer's ability to provide the required services as reflected/evidenced by qualifications (education, experience, etc.). This includes the ability of the proposer to provide a work product that is legally defensible **(Very Important)**
- (5) The personnel, equipment, facilities, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting **(Important)**
- (6) A record of past performance of similar work **(Critical)**
- (7) Price. **(Important)**

Step III. The State Personnel Director or his designee will contact the offeror/proposer with the proposal that best meets SPB needs (based on factors evaluated in Step II) and attempt to negotiate an agreement that is deemed acceptable to both parties.

23.0 ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST SHALL BE IN WRITING.

24.0 COST DATA SUBMITTED AT THIS STAGE IS SUBJECT TO NEGOTIATION BUT SHOULD INCLUDE AN ESTIMATE OF THE ANNUAL COST OF THE SERVICE.

25.0 THE FOLLOWING RESPONSE FORMAT SHALL BE USED FOR ALL SUBMITTED PROPOSALS:

- I. **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
- II. **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks.
- III. **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.
- IV. **Personnel:** Attach resumes' of all those who will be involved in the delivery of service - from principals to field technicians - that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
- V. **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person.
- VI. **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the bid document and to insurance, bonding, and any other requirements listed.
- VII. **Additional data:** Provide any additional information that will aid in evaluation of the response.
- VIII. **Cost data:** Estimate the annual cost of the service. Cost data submitted at this stage is not binding and is subject to negotiation if your firm is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals.